ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of	)	
	)	
Petition of WorldCom, Inc. Pursuant to Section	)	
252(e)(5) of the Communications Act for Expedited	)	
Preemption of the Jurisdiction of the Virginia State	)	
Corporation Commission Regarding	)	CC Docket No. 00-218
Interconnection Disputes With Verizon-Virginia,	)	
Inc. And for Expeditious Arbitration	)	
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OPPOSITION OF VERIZON-VIRGINIA, INC.

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November 13, 2000

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of the Virginia State Corporation Commission	)	
Regarding Interconnection Disputes With	)	
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OPPOSITION OF VERIZON-VIRGINIA, INC.

The Commission should deny WorldCom's preemption petition for two fundamental reasons. First, WorldCom has failed to satisfy the legal requirements under the Telecommunications Act of 1996 for commencing such arbitrations. Among other things, WorldCom has failed to negotiate at all over the substantive provisions of a new agreement, as it is required to do under the Act, and its arbitration petition is based on a contract proposal that had never before been shared with Verizon. As such, WorldCom's petition can fairly be construed as only a request to negotiate and cannot form the basis for an arbitration. Because no proper arbitration request was properly before the Virginia SCC, there is nothing for this Commission to preempt.

Second, granting WorldCom's Petition could have a devastating effect on the parties' current negotiations in at least twenty other jurisdictions. WorldCom, instead, should be directed to engage in meaningful negotiations with Verizon, as the Act contemplates, before seeking

arbitration, just as it is negotiating with Verizon elsewhere. Lastly, any arbitration proceeding that may eventually be necessary after WorldCom first engages in the statutorily required negotiations over its new contract proposal should be conducted as an arbitration, not as a rulemaking as WorldCom proposes.

BACKGROUND

Verizon and WorldCom entered into an interconnection agreement on June 13, 1997 (the "1997 agreement").[1] The parties' agreement expired on July 17, 2000, but under its terms it remains effective until the parties enter into a new agreement.[2]

On January 14, 2000, WorldCom filed with the Virginia SCC for a two year extension of the parties' existing agreement. On February 28, 2000, after Verizon responded formally to the Virginia SCC that it did not agree that the existing contract should be extended without change, WorldCom withdrew its filing with the Virginia SCC.

On March 3, 2000, WorldCom served Verizon with a request for negotiation of a new interconnection agreement. Verizon responded on March 7 by sending WorldCom a copy of Verizon's updated interconnection agreement containing Verizon's standard product descriptions and operational procedures, as well as a copy of Verizon's proposed amendment to implement

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[1] Verizon's predecessor, Bell Atlantic Virginia Inc., entered into interconnection agreements in Virginia with two WorldCom subsidiaries, one on July 16, 1996 and another on June 13, 1997. The agreement entered into on July 16, 1996 was with MCI WorldCom Communications of Virginia, Inc. (f/k/a MFS Intelenet of Virginia)("MFS"). The agreement entered into on June 13, 1997 was with MCImetro Access Transmission Services of Virginia, Inc. ("MCImetro"). Both agreements were approved by the Virginia SCC. Following the expiration of the earlier agreement, the Virginia SCC approved MFS's adoption of the Bell Atlantic Virginia Inc./MCImetro agreement. See Case No. PUC000114 (April 25, 2000).

[2] See Interconnection Agreement, Part A, ¶ 3.1.

the Commission's recent Unbundled Network Element Remand Order.[3] On March 13, 2000, WorldCom rejected the Verizon updated standard agreement in its entirety and insisted on using the 1997 agreement as a starting point for negotiations. On March 15, 2000, Verizon objected to negotiating from the technically and legally outdated 1997 agreement but assured WorldCom that it was willing to negotiate in good faith as to all of WorldCom's requested requirements pursuant to the updated agreement containing Verizon's standard product terms. WorldCom rejected that proposal as well.

On March 21, 2000, WorldCom withdrew its proposal to negotiate from the 1997 agreement. On March 23, 2000, WorldCom sent Verizon its own new template (containing, among other things, WorldCom's own descriptions of Verizon's product offerings) on which to base negotiations, a fact that WorldCom omitted from its version of the facts in the Petition. On April 3, 2000, however, before Verizon could even react to or comment on WorldCom's new template, WorldCom filed a Motion Requesting Mediation, in which it reverted back to its initial position of using the 1997 agreement as the basis for negotiations and in which it asked the Virginia SCC to help the parties resolve "whether the existing interconnection agreement between [WorldCom] and [Verizon] is the appropriate starting point for negotiations on the new interconnection agreement."[4]

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[3] See Third Report and Order and Fourth Further Notice of Proposed Rulemaking, *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, 15 FCC Rcd 3696 (November 5, 1999).

[4] *Petition of MCI Telecommunications Corporation and MCImetro Access Transmission Services of Virginia, Inc. for Arbitration of Unresolved Issues with Bell Atlantic-Virginia, Inc. pursuant to § 252 of the Telecommunications Act of 1996*, Case No. PUC000116, at 3 (Apr. 3, 2000)("Motion for Mediation").

Due to WorldCom's refusal to negotiate that threshold issue, the parties never agreed upon an acceptable template from which to base negotiations. Nevertheless, there have been numerous discussions about scheduling negotiations for Virginia and other jurisdictions.[5] As a direct result of those discussions, on May 30, 2000, Verizon and its operating telephone company affiliates proposed a state-by-state schedule for renegotiating contracts expiring in 2000, including contracts in Rhode Island, New Hampshire, Maine, Pennsylvania, New Jersey, Washington D.C., New York and Connecticut, as well as Virginia. Verizon proposed June 15, 2000 as the start date for negotiations for Virginia.[6]

On June 22, 2000, WorldCom responded to Verizon by proposing a different schedule for negotiating interconnection agreements, but omitted a schedule for Virginia negotiations.[7] The very next day, Verizon agreed to review WorldCom's proposed negotiation schedule.[8] Then, on July 31, after the merger of Bell Atlantic and GTE was consummated, Verizon proposed a

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[5] Verizon frequently engages in such discussions with Competitive Local Exchange Carriers operating in multiple jurisdictions. By staggering the timing of negotiations, both parties can avoid the conflicts that witnesses and attorneys would experience if arbitrations had to be held simultaneously in multiple jurisdictions.

[6] *See* Exhibit 1.

[7] *See* Exhibit 2.

[8] Id. On July 14, 2000, Calvin Twyman, the lead Bell Atlantic negotiator, told Mark Lugar, the lead WorldCom negotiator, that because of Bell Atlantic's merger with GTE he would need more time to review WorldCom's proposed schedule in order to provide a coordinated response for the entire new Verizon footprint. *See* Exhibit 3.

negotiation schedule for nine former Bell Atlantic and GTE jurisdictions, including Virginia.[9] In that proposal, Verizon noted WorldCom's omission of Virginia from its proposed schedule and, consistent with the parties' approach in every other state, suggested that the parties renegotiate interconnection terms for Virginia.

Notwithstanding Verizon's explicit suggestion, WorldCom never advised Verizon that it was no longer interested in scheduling negotiations for Virginia. Instead, on August 10, the last day after under the Act for negotiations, without any prior notice to Verizon or further attempt to determine and resolve any issues, WorldCom simply filed its arbitration petition with the Virginia SCC. Thus, at the very time it was scheduling negotiations with other Verizon operating telephone companies on identical or similar agreements in eight other jurisdictions, WorldCom took the extraordinary step of trying to force the Virginia SCC to arbitrate each and every term of an interconnection agreement, notwithstanding that WorldCom had not engaged in ***any*** substantive negotiations regarding ***any*** of those terms.[10]

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[9] *See* Exhibit 4. Under Verizon's proposal, negotiations would start with Texas on October 1st, and then proceed to a new jurisdiction every 15 days (*e.g.*, New Jersey on October 15th, Pennsylvania on November 1st). For jurisdictions other than Virginia, the parties are continuing to discuss scheduling negotiations for interconnection agreements to replace expired or expiring agreements. Even in Virginia, the parties are continuing to discuss scheduling negotiations for expiring GTE agreements. Thus, the parties appear close to reaching an agreement on a schedule to engage in real negotiations ***in twenty jurisdictions***. In fact, for the twenty jurisdictions in which the existing agreement between a Verizon operating telephone company (former Bell Atlantic or former GTE) and a WorldCom entity either has expired or is about to expire, the parties are discussing a schedule that will result in arbitration proceedings beginning in April 2001. The Virginia agreement between Bell Atlantic and WorldCom could readily be included in that multi-jurisdictional negotiations schedule, and Verizon has suggested just that to WorldCom several times.

[10] WorldCom has, however agreed to negotiate a new interconnection agreement covering the former GTE territory in Virginia.

Furthermore, along with its arbitration petition to the Virginia SCC on August 10, 2000, WorldCom filed yet a third proposed agreement, which was an amalgam of the 1997 agreement, the revised agreement it had submitted on March 23, 2000, along with a host of other substantive provisions and changes, substantial portions of which Verizon had ***never seen before***. WorldCom never even discussed those changes with Verizon and, accordingly, Verizon never had the opportunity to consider them. WorldCom admitted in its arbitration petition that its new agreement contains "material" changes from the existing contract that are "not based solely on a change in law or change in existing business practices," and Verizon was never advised that WorldCom sought such changes until the day after WorldCom filed its petition.[11] WorldCom did not provide Verizon a copy of its petition and proposed interconnection agreement until the day after it filed it with the Virginia SCC, the 161st day after it requested negotiations.

The following are just a few examples of WorldCom positions that violate statutory requirements since Verizon saw them ***for the first time*** in WorldCom's August 10, 2000 proposed agreement:

- Although WorldCom claimed in its arbitration petition to the Virginia SCC to seek symmetrical rates for reciprocal compensation, under terms it included for the first time in its newly-proposed agreement, Verizon would be required to pay a much higher reciprocal compensation rate to WorldCom ($0.005 tandem) than WorldCom would pay to Verizon ($0.00159 tandem or $0.000927 end office). This rate proposal was not in WorldCom's March 3, 2000 or March 23, 2000 proposals, and appears for the first time in the agreement attached to WorldCom's arbitration petition.

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[11] *Petition of MCImetro Access Transmission Services of Virginia, Inc. and MCI WORLDCOM Communications of Virginia, Inc. For arbitration of an interconnection agreement to replace the existing interconnection agreement with Bell Atlantic-Virginia, Inc. pursuant to § 252(b) of the Telecommunications Act of 1996*, Case No. PUC000225, at 6 (August 10, 2000) ("Arbitration Petition").

- WorldCom sought rates for the Unbundled Network Element Platform (known as UNE-P) that do not reflect the prices for the underlying unbundled elements that were established by the Virginia SCC.

- WorldCom removed Section 4.1.2.1, which addresses WorldCom's responsibility for bearing certain trunk costs, from its August 10, 2000 proposed agreement, even though this critical provision was included in WorldCom's March 3rd proposed agreement and is in the parties' current agreement. Furthermore, WorldCom did not identify Section 4.1.2.1 as an unresolved issue in its arbitration petition, contrary to the Act.[12]

Verizon responded to WorldCom's arbitration petition on September 5, 2000, noting its technical deficiencies, relating WorldCom's refusal to negotiate and asking, once again, for WorldCom to be directed to negotiate with Verizon in good faith.[13] By Order dated September 13, 2000, the Virginia SCC advised WorldCom that it would not act on Verizon's motion to dismiss WorldCom's arbitration petition and, instead, would give WorldCom the option of proceeding before it under state law or filing with this Commission.[14] Therefore, the Virginia SCC never ruled on whether the arbitration petition met the requirements of the Act.

On October 26, 2000, WorldCom filed the instant petition asking this Commission to preempt the Virginia SCC.

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[12] Arbitration Petition, at 7-25.

[13] See *Motion of Verizon Virginia Inc. to Dismiss the Arbitration Petition of MCImetro Access Transmission Services of Virginia, Inc. and MCI WORLDCOM Communications of Virginia, Inc.*, Case No. PUC000225 (September 5, 2000).

[14] See Order of the Virginia SCC, *Petition of MCImetro Access Transmission Services of Virginia, Inc. and MCI WORLDCOM Communications of Virginia, Inc. For Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Bell Atlantic-Virginia, Inc.*, PUC000225 (September 13, 2000).

ARGUMENT

I. This Matter Was Not Properly Before the Virginia SCC, So There Is Nothing To Preempt.

WorldCom's preemption petition should be dismissed for the simple reason that it is not ripe. As described above, WorldCom has utterly failed to comply with its statutory obligation to negotiate in good faith over the substantive terms of a new interconnection agreement and instead chose to file an arbitration petition with a new contract proposal that had never even been shared with Verizon. The new proposal, and the proposal before the Virginia SCC from which it is derived, can fairly be construed only as requests to negotiate, and WorldCom should be required to now engage in the negotiations required by the Act – negotiations that it already is pursuing for the other jurisdictions in which it operates. While WorldCom's petition must be dismissed on this basis alone, the petition is legally defective for other reasons as well, as further described below.

A. WorldCom Failed To Negotiate In Good Faith As Required Under The Act.

By its terms, the 1996 Act makes clear that parties may seek arbitration only after first engaging in good faith negotiations over the substantive issues that are the subject of a proposed interconnection agreement, and they may request arbitration only of those issues that the parties have been unable to resolve through such negotiations. WorldCom has failed to do so. Specifically, section 251(c)(1) of the Act assigns to both the Incumbent Local Exchange Carrier ("ILEC") and the "requesting telecommunications carrier" seeking arbitration under § 252(b) of the Act, "the duty to negotiate in good faith . . . the particular terms and conditions of

agreements." The Commission's regulations implementing the Act reiterate that duty to "negotiate in good faith" the terms and conditions of interconnection agreements.[15]

The importance that Congress placed on this duty to negotiate in good faith as a precondition to filing an arbitration petition is reflected in both the language of the Act and the structured procedures preceding and following arbitration under § 252. Pursuant to § 252(b)(1), between the 135th and 160th day after a request for negotiation of terms for an interconnection agreement, any party may petition a State commission to arbitrate "any open issue." The parties are expected to spend the 135 to 160 days between the request for negotiation and the filing of an arbitration petition ***actually negotiating*** the terms of an agreement. In addition, § 252(b)(4)(B) permits State commissions to require the parties "to provide such information as may be necessary for the State commission to reach a decision on the ***unresolved issues***" (emphasis added), clearly indicating that the parties are expected to negotiate and attempt to resolve the issues in advance of seeking arbitration

Interconnection agreements such as the one Verizon currently has with WorldCom are exceedingly complex, running to hundreds of pages with many interrelated terms and conditions, and can take months to negotiate. In stark contrast to scores of other telecommunication providers seeking interconnection with Verizon, WorldCom concedes that there have been no meaningful negotiations between the parties on ***any*** of the terms and conditions necessary for an interconnection agreement.[16] Indeed, WorldCom has filed ***yet another*** proposed agreement with its petition here that was never even shared with Verizon and obviously could not have been the

[15] 47 CFR § 51.301.

[16] Arbitration Petition at 5.

subject of any substantive negotiations. As a result, the parties have never, during the entire period leading up to the filing with either the Virginia SCC or this Commission, discussed, let along resolved, any of the hundreds of specific terms and conditions in its proposed interconnection agreement. The Act simply does not work if a carrier fails to negotiate substantively and then seeks arbitration on every aspect of an interconnection agreement, as WorldCom has attempted to do here. Under these circumstances, neither a State commission, nor this Commission acting in its behalf, can reasonably be expected to arbitrate and resolve the issues in the short time allotted under § 252(b)(4). WorldCom's complete failure to even attempt to negotiate the substance of an agreement made its petition to the Virginia SCC defective, and means that there is nothing properly before this Commission on which it could validly preempt.[17]

Furthermore, the complete absence of substantive negotiations means that WorldCom itself does not even know what issues are in dispute; nor, for that matter, does Verizon. As such, it cannot meet its statutory obligations under § 252(b)(2)(A)(ii) of the Act, which requires the identification of the resolved and unresolved issues and the description of Verizon's position on the disputed issues. WorldCom even acknowledges that it has no actual knowledge of Verizon's position on most of the terms and conditions that WorldCom proposes, and the 40 issues WorldCom has labeled "unresolved" in its arbitration petition are merely WorldCom's guess as to what the parties may be unable to resolve through substantive negotiations.

WorldCom's actions in Virginia stand in stark contrast with its actions elsewhere, where it is at least purporting to negotiate with Verizon. WorldCom does not, and cannot, explain why

[17] WorldCom's alternative suggestion, that the Commission simply order the parties to adopt WorldCom's version of the agreement, is entirely without legal basis, in addition to being contrary to the public interest and unfair to Verizon. See Arbitration Petition at 11.

it should not negotiate its interconnection agreement in Virginia at the same time it is negotiating interconnection agreements in twenty other jurisdictions. Indeed, if WorldCom's Petition is denied, as it should be, negotiations for Virginia can easily be included in the negotiations for those other states, and WorldCom will not be harmed.

B. WorldCom Has Failed to Meet Statutory Pleading Requirements.

WorldCom's petition is also defective because it failed to comply with the procedures specified in the Act for initiating arbitration proceedings. Congress set forth in the Act a clear, precise and orderly set of requirements for the commencement and consummation of such arbitration petitions.[18] Congress drafted these procedures clearly in order for telecommunications companies and State commissions to have a predictable process by which to pursue the formation of interconnection agreements. Neither the State commissions, nor this Commission, were granted authority or the discretion to disregard these procedures or to act outside the context of this framework.

Because of the tight schedule for the State commission to resolve the arbitration, the Act sets forth very precise filing requirements for petitions for arbitration. The petitioning party must, at the same time it submits the petition, provide the State commission with all relevant

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[18] See, e.g., 47 U.S.C. § 252(b)(1)("Arbitration.-- During the period from the 135th to the 160th day (inclusive) after the date on which an incumbent local exchange carrier receives a request for negotiation under this section, the carrier or any other party to the negotiation may petition a State commission to arbitrate any open issues"); § 252(b)(2)(A)("A party that petitions a State commission under paragraph (1) shall, at the same time as it submits the petition, provide the State commission all relevant documentation concerning-- (i) the unresolved issues; (ii) the position of each of the parties with respect to those issues; and (iii) any other issues discussed and resolved by the parties"); § 252(b)(2)(B)("A party petitioning a State commission under paragraph (1) shall provide a copy of the petition and any documentation to the other party or parties not later than the day on which the State commission receives the petition").

documentation concerning the unresolved issues, the position of each of the parties with respect to each of the issues, and any other issue discussed and resolved by the parties.[19] The petitioner must also provide the other party with a copy of those documents "not later than the day on which the Commission receives the petition."[20] And, in Virginia, the petitioner must also file with its petition any prefiled testimony and all materials upon which it intends to rely.[21]

In this case, WorldCom has met ***none*** of these requirements, and, therefore, has failed to comply with the Act in at least three separate and significant ways. First, because indisputably there were ***no*** substantive negotiations between the parties on specific terms and conditions of an interconnection agreement, let alone the substantially different proposed agreement attached to WorldCom's arbitration petition, WorldCom simply has not provided necessary information on "unresolved issues," as required by § 252(b)(2)(A)(i). Pursuant to that section, it is the "[d]uty of the petitioner" to provide the State commission with "all relevant documentation concerning ... the unresolved issues." Section 252(b)(2)(A)(i) does not allow the party filing for arbitration to guess as to which issues are "unresolved;" yet this is exactly what WorldCom has apparently attempted to do both here and in its arbitration petition before the Virginia SCC. In fact, WorldCom's attempt to comply with this filing requirement falls far short of the mark; even the

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[19] See 47 U.S.C. § 252(b)(2)(A)("A party that petitions a State commission under paragraph (1) shall, at the same time as it submits the petition, provide the State commission all relevant documentation concerning-- (i) the unresolved issues; (ii) the position of each of the parties with respect to those issues; and (iii) any other issue discussed and resolved by the parties.").

[20] 47 U.S.C. § 252(b)(2)(B)("A party petitioning a State commission under paragraph (1) shall provide a copy of the petition and any documentation to the other party or parties not later than the day on which the State commission receives the petition.").

[21] See 20 Virginia Administrative Code 5-400-190(C)(1).

heading of the section in the instant petition in which WorldCom tried to slip by this requirement shows this failure: "Contract Changes ***Likely*** to be in Genuine Dispute."[22]

Second, for exactly the same reasons, WorldCom has not met, and cannot meet, its statutory obligation under § 252(b)(2)(A)(ii). The "[d]uty of [the] petitioner" is to provide the State commission with "all relevant documentation concerning ... the position of each of the parties with respect to those [unresolved] issues."[23] Indeed, in its arbitration petition, WorldCom readily acknowledged that because of the absence of ***any*** meaningful negotiations "it is unable to anticipate, let alone provide" Verizon's position.[24] The pleading requirements of § 252(b)(2)(A)(ii) are there to force the parties to attempt to pare down the list of unresolved issues ultimately presented to an arbitrating Commission. Not only has WorldCom shirked its statutory duty in this respect, of the 40 issues that WorldCom arbitrarily has chosen to label "unresolved," it has not even attempted to guess at Verizon's position on 32 of them, simply stating that Verizon's position on each such issue is "unknown." In any event, guessing at Verizon's position does not substitute for complying with the requirements of § 252(b)(2)(A)(ii).

Third, WorldCom violated § 252(b)(2)(B) by failing to provide Verizon with a copy of its arbitration petition "not later than the day on which the State commission receives the petition."[25] Instead, WorldCom did not provide Verizon a copy of its petition until the day after it filed with the Virginia SCC. As a result, WorldCom violated § 252(b)(2)(B) and curtailed Verizon's statutory right to respond to the petition within 25 days, which runs from the date the Virginia

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[22] Arbitration Petition at 11 (emphasis added).

[23] 47 U.S.C. § 252(b)(2)(A)(ii).

[24] Arbitration Petition at 6.

SCC received the petition, not the date Verizon received the petition.[26] The statutory requirement is not merely for the convenience of the State commission. Congress imposed that requirement with no qualification and neither this Commission, nor any State commission, has been given discretion under the Act to waive or ignore it. Statutory time limits are subject only to the limited defenses of waiver, estoppel and equitable tolling, none of which are applicable here.[27] Of its own volition, WorldCom chose to serve the Virginia SCC with its arbitration petition on the 160th day and failed to fulfill its statutory obligation to serve Verizon with that petition "not later than the day on which the State commission receives the petition" as absolutely required by the Act, and the petition should be dismissed for this reason alone.

Of course, none of this means that WorldCom is without a remedy if there are issues that ultimately cannot be resolved through negotiations between the parties. It does mean, however, that WorldCom first must engage in the negotiations required by the Act, and if there are issues that cannot be resolved, it may then file a proper and timely arbitration petition.

II. The Grant of WorldCom's Petition Would Upset Ongoing Negotiations In Twenty Other Jurisdictions.

The parties are close to reaching an agreement on a schedule to engage in real negotiations in twenty jurisdictions, including Virginia for the former GTE service territory, for

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[25] 47 U.S.C. 252(b)(2)(B).

[26] See 47 U.S.C. § 252(b)(3).

[27] See *Irwin v. Dep't of Veteran Affairs*, 498 U.S. 89, 95-96 (1990). Equitable tolling is not warranted for simple excusable neglect. See *Baldwin County Welcome Ctr. v. Brown*, 466 U.S. 147, 151 (1984)(equitable tolling unwarranted where claimant failed to exercise due diligence in preserving his legal rights); *White v. Bentsen*, 31 F.3d 474, 475 (7th Cir. 1994)("one who decides to follow a schedule of his own devising, for reasons of his own invention, has no legitimate complaint when the tribunal adheres to the rules").

the expiring agreements between WorldCom and Verizon. This process should be allowed to continue and reach a conclusion before this Commission is forced to arbitrate scores of issues that the parties may well negotiate and resolve in these other jurisdictions. It appears that WorldCom's real objective here is to invoke its own violation of the Act by failing to engage in meaningful negotiations for Virginia as a basis to effectively circumvent the negotiation process. It would do this by having this Commission undertake the heavy lifting of deciding every aspect of the interconnection agreement, so WorldCom could use the result to override ongoing negotiations and any state commission proceedings that may result. This type of gamesmanship cannot be permitted to succeed.

III. The Commission Should Not Adopt WorldCom's Proposed Arbitration Procedures For Use In The Event There Are Unresolved Issues After Negotiations Have Been Completed.

The Commission should not adopt the procedures proposed by WorldCom for any arbitration proceedings that may be necessary after negotiations are completed. Specifically, amicus briefs should not be solicited or allowed, nor should a panel of various Bureau representatives be appointed as arbitrators. WorldCom's proposal would turn this into a rulemaking rather than the adjudication that the Act requires. Instead, the Commission should assign a single neutral arbitrator to conduct any necessary evidentiary proceedings and to recommend a decision, with that recommendation subject to review by the full Commission. This approach is consistent both with the Commission's own rules and with the approach generally adopted by state commissions.

First, third parties should not be permitted to file amicus briefs. This is an arbitration involving two parties attempting to establish a mutually satisfactory interconnection agreement

for exchange of traffic between them. Allowing amicus briefs would result in the Commission and Verizon expending considerable amounts of time and energy reviewing and responding to what will likely be numerous briefs from a wide spectrum of telecommunications providers – providers with no vested interest in the terms and conditions for exchange of traffic between WorldCom and Verizon. This should be conducted as a restricted adjudication, similar to a formal complaint, in much the same way as the Commission intends to conduct other proceedings for which it recently granted preemption.[28]

Second, Verizon objects to WorldCom's proposal that arbitration be conducted by a panel composed of one representative of the Common Carrier Bureau, one representative of the Office of Engineering and Technology and one representative of the Office of Plans and Policy. Adoption of this proposal would also result in this proceeding being treated like a policy case rather than an adjudication. The Commission has established rules that apply to arbitrations it conducts pursuant to § 252(e)(5) of the Act.[29] Within the rules contained in 47 C.F.R. § 51.808, there are at least nine references to an "arbitrator," unlike WorldCom's novel proposal of an arbitration panel. According to those rules, an arbitrator appointed by the Commission must implement either "entire package final offer arbitration or issue-by-issue final offer arbitration" and, therefore, is entrusted with great responsibility and discretion not only in managing the

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[28] See, *Starpower Communications, LLC Petition for Preemption of Jurisdiction of the Virginia State Corporation Commission Pursuant to Section 252(e)(5) of the Telecommunications Act of 1996*, CC Docket No. 00-52, FCC 00-216 (June 14, 2000); *Cox Virginia Telecom, Inc. Petition for Preemption of Jurisdiction of the Virginia State Corporation Commission Pursuant to Section 252(e)(5) of the Telecommunications Act of 1996*, CC Docket No. 00-126, DA 00-2118 (September 14, 2000).

[29] See 47 C.F.R. § 51.808.

arbitration, but also in ultimately determining the parties' rights.[30] As contemplated by both the Act and the Commission's rules, an arbitration should be a judicial-type proceeding, in which the arbitrator makes determinations based upon the evidence presented by the parties. Accordingly, an arbitrator must have the necessary skills and experience for conducting such proceedings in a formal and effective manner that is independently based on the evidentiary record presented by the parties.

As a result, the Commission should require the arbitrator to treat any arbitration as a formal proceeding between two parties and reach a decision based only upon the evidence presented. An independent arbitrator who will act as a judge should be appointed and should be required to use standard business arbitration practices. Accordingly, if the Commission grants WorldCom's petition (which it should not) it should appoint a commercial arbitrator under the auspices of the American Arbitration Association to preside and issue a recommended decision. Alternatively, the Commission should appoint one of its Administrative Law Judges to preside . In either case, the arbitrator's recommendations should be subject to exceptions by the parties and then resolved by the full Commission.[31]

CONCLUSION

WorldCom's petition before the Virginia SCC, which that Commission refused to hear, was prematurely filed, because WorldCom had not met its statutory obligation to engage in good faith negotiations. In addition, the filing itself violated a number of provisions of the 1996 Act

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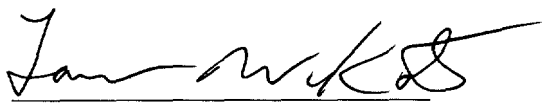
[30] 47 C.F.R. § 51.808(d)(1).

[31] 47 C.F.R. § 51.805(a) states that if the Commission assumes responsibility for a proceeding or matter pursuant to section 252(e)(5) of the Act, "[a]t a minimum, the Commission shall approve or reject any interconnection agreement adopted by ... arbitration."

and was, therefore, defective. Because there was nothing properly before the Virginia SCC, there is nothing for this Commission to preempt. Therefore, WorldCom's petition should be denied.

Respectfully submitted,



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November 13, 2000

EXHIBIT 1

JEFFREY A. MASONER
05/30/2000 02:21 PM
To: marcel.henry@wcom.com
cc: (bcc: JEFFREY A. MASONER/EMPL/VA/Bell-Atl)
Subject: Renegotiation Schedule

Marcel:

As discussed on Thursday, following is a proposed renegotiation schedule for contracts expiring in 2000. The schedule is based on termination dates of the underlying contracts. As we discussed, Massachusetts was somewhat different in that the Worldcom and Brooks contracts had significantly varying termination dates; however, we received Worldom's request to MFN adopt the MCI agreement for Brooks, thereby pushing the termination date out to 2001.

The proposed dates would represent a start date for negotiations, thus setting the potential arbitraiton window 135-160 days out from that point.

June 1 start date: RI (Brooks contract terminated 5/23/00)

June 15 start date: NH, ME, VA (July 17 terminations)

July 15 start date: PA, NJ, DC (August 31 terminations)

August 15 start date: NY, CT (October 1 and September 30 terminations, respectively)

Hope you had a good trip over the holiday weekend; I look forward to hearing from you on Friday.

Jeff

EXHIBIT 2

CALVIN S. TWYMAN
06/23/2000 02:40 PM
To: "Mark H. Lugar" <Mark.H.Lugar@wcom.com>
cc: "Marcel Henry" <Marcel.Henry@wcom.com>, "Matthew. Harthun" <Matthew.Harthun@wcom.com>, JEFFREY A. MASONER/EMPL/VA/Bell-Atl@Bell-Atl, MARCEL A. BRYAR@GCO
Subject: Re: Negotiations Timeline Proposal

Mark,

I received your proposal for the renegotiations timeline. Since I will be on vacation next week, I will provide you with our response the week of the 4th.

Calvin

"Mark H. Lugar" <Mark.H.Lugar@wcom.com> on 06/22/2000 11:37:28 AM

To: CALVIN S. TWYMAN/EMPL/VA/Bell-Atl@Bell-Atl
cc: "Marcel Henry" <Marcel.Henry@wcom.com>, "Matthew. Harthun" <Matthew.Harthun@wcom.com>

Subject: Negotiations Timeline Proposal

Calvin,

At the direction of Marcel Henry, MCI WorldCom would like to propose the following schedule as a means to advance our existing agreements in the following states. We feel that schedule represents a reasonable timeline based on schedules and resources between our companies. I would appreciate any feedback Bell Atlantic has on this proposal

State Proposed time frame

NJ - Start 252 negotiations in July

PA - Start 252 discussions in August or September (awaiting PUC and court rulings on BA's separate business units)

NY, CT - Start negotiations in September

DC - Q4 or adopt one of the VA or PA documents for use in DC

Mark Lugar
MCI WorldCom
East Region Carrier Agreements
8521 Leesburg Pike
Vienna, Virginia 22182

703-918-6656 (V)
703-918-6630 (F)

EXHIBIT 3

CALVIN S. TWYMAN
07/14/2000 04:38 PM
To: Mark.H.Lugar@wcom.com
cc:
Subject: Renegotiation schedule

Mark,

BA is still reviewing the renegotition schedule you proposed. We will need more time than I originally estimated due to our recent merger with GTE and the need to coordinate our negotiations with our merger commtiments. Based on that I expect we will provide you with our reponse by July 31st.

Calvin

EXHIBIT 4

CALVIN S. TWYMAN
07/31/2000 07:24 PM

To: Mark.H.Lugar@wcom.com
cc: Marcel.Henry@wcom.com, John.Trofimuk@wcom.com, Kathy.Jespersen@wcom.com, Myra.Neal@wcom.com, JEFFREY A. MASONER/EMPL/VA/Bell-Atl@Bell-Atl, LAUREL.parr@telops.gte.com
Subject: MCI-Verizon Renegotiations

Mark,

Verizon has reviewed your proposed schedule for renegotiations of our interconnection agreements expiring this year in the Bell Atlantic ("BA") jurisdictions of NJ, PA, DC and NY/CT.

In addition, now that the BA and GTE merger has been completed and since both companies have been engaged in discussions with MCI Worldcom ("MCI") on behalf of its affiliates MCI Metro, MCI WORLDCOM Communications (formerly MFS), and Brooks Communications on a plan for renegotiations, we have also looked at the agreements expiring this year in the GTE footprint. This includes the following additional states for the GTE jurisdictions: TX, FL, WA, and VA. In addition, VA also applies for BA. Therefore, I am forwarding a copy of this along to your counterparts, who have been in negotiations with my new counterparts at GTE, so that all parties will be able to review and comment on this proposal.

Our objective when we renegotiate in a state, will be to renegotiate all the expiring/terminating agreements for that state concurrently. Therefore, given our FCC merger commitment to provide a unified interconnection agreement across the new Verizon footprint, the timeline associated with that commitment, and your prior input, along with the input from the MCI team negotiating with GTE, we recommend that we start renegotiations on 10/01/00, and begin the negotiations as your GTE team recommended in Texas. This would be followed by the BA states in the order you recommended. Also, in early September, prior to our first start date, in accordance with the MCI request, we will send you our new Verizon template to provide you time to review its terms.

As for the remaining GTE states of VA, WA and FL which have agreements expiring this year, or agreements for which GTE has sent a Termination letter, we propose that we begin these renegotiations immediately following the BA states with the exception of VA; as VA is an overlapping state for BA and GTE. Therefore, we propose that we combine our negotiations in VA to include all the active agreements for the parties (i.e., BA, GTE, MCIm and the former MFS company) so that there would be a single timeline for all renegotiated agreements in the state. Further, with respect to VA, which was not specified on your proposed schedule for BA, we recommend that we begin there concurrent with DC, since we think most of the issues and requirements will be similar for these adjacent jurisdictions.

Following is the proposed renegotiation schedule by jurisdiction and respective company:

TX (GTE)-	MCIm/MFS	10/01/00
NJ (BA)-	MCIm/MFS	10/15/00
PA (BA)-	MCIm/MFS	11/01/00
NY (BA)-	MCIm/MFS	11/15/00
CT (BA)-	MCIm/MFS	11/15/00
DC (BA)-	MCIm/MFS	12/15/00
VA (BA) -	MCIm/MFS	12/15/00
VA (GTE) -	MCIm/MFS	12/15/00
WA (GTE)-	MCIm/MFS	01/15/01
FL (GTE)-	MCIm/MFS	02/15/01

Please advise me if MCI finds this schedule acceptable.

Calvin

CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of November, 2000, copies of the foregoing "Opposition of Verizon-Virginia Inc." were sent by first class mail, postage prepaid, to the parties on the attached list.

Steven E. McPherson

Steven E. McPherson

* Via hand delivery.

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Washington, DC 20554

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